monial home with the petitioner and to assist him in earning a living. The petitioner, although the evidence shows that he did not have much education, did not give me the impression of being a stupid person. He was able to answer questions put to him rationally. For the reasons given, I find that the petitioner has not succeeded in proving the second ground as given in his petition. The point has been taken by counsel for the petitioner that Datuk Ting Lik Hung, DW2, who gave evidence for the respondent and whose evidence was accepted by the court in *Tang Sui Ing's* case, did not in that case give a time limit in relation to the second ground given in the instant petition which, as earlier stated, appears to be based on one of the recognised grounds listed in the *Tang Sui Ing's* case. However, DW2 in evidence categorically stated in relation to this ground that the period required was two years. He further stated that according to Foochow custom, if a wife cannot get on with her mother-in-law, the wife is entitled to ask the husband to set up a separate home outside and that she would be justified in leaving her husband if she does not get on with her mother-in-law. DW2 also confirmed the grounds for divorce as given by him in the *Tang Sui Ing's* case.

DW2 is a well-known and well respected person in Sibu whose evidence had many a time before been accepted by the courts regarding matters relating to Foochow customary law on marriage and divorce. Like Seah J. in the case of *Kong Nen Siew* v. *Lim Siew Hong*,[2] I am satisfied that he is a recognised authority on Foochow custom relating to marriage and divorce and consider that he qualifies as an expert within the meaning of section 45 of the Evidence Act, 1950. I do not consider that his evidence as to the period required on the ground of incompatibility as mentioned above conflicts with what he stated in the *Tang Sui Ing's* case but would consider the evidence he gave in this case as evidence supplementary to that given in the earlier case, and I accept his evidence, including his evidence on the point.

I hold therefore on the evidence and for the reasons which I have given that the petitioner has not succeeded in proving both grounds given by him in his petition against the respondent and accordingly his petition is dismissed with costs.

The respondent has asked for maintenance against the petitioner for herself and the child of the marriage. I have found that the respondent is living apart from the petitioner not without sufficient reason. She is therefore not to be deprived of her right to maintenance by the petitioner. In the case of *Sia Wang Yung (f)* v. *Hii Ik Chieng*[3] (Sibu Matrimonial Cause No. 1 of 1967), Lee Hun Hoe J. (as he then was) states (at page 6 of the judgment) that: "If (the petitioner) had asked the respondent to set up a separate home and he failed to do so then she had every right to refuse to live at his parents' home and to ask for maintenance." The petitioner stated that he was earning an average of $30 a month and that his younger brother who was aged about 20 years also contributed to the family expenses. However, he also stated that his father was not working but it seems clear from the evidence of PW3 that his father also planted padi with the petitioner and therefore his father was also working. I think that the petitioner was exaggerating about the limit of his earnings. If he was merely earning about $30 a month, I do not consider that he would be in a position to accept the offer of PW2 to live outside with the respondent. In all the circumstances, I consider that it would not be outside the means of the petitioner to pay $35 per month towards the maintenance of the respondent and the child of the marriage and I so order. There shall be liberty to apply for a variation of this order by either party.

I would add a word about the child of the marriage. The evidence shows that the birth of this child has not yet been properly registered. I consider that it would be in the interest of all parties including the petitioner himself that no time should be lost in having the birth appropriately registered and steps should therefore be taken in this regard.

Order accordingly.

Solicitors: *Tang & Co.; Cheng & Co.*

POK KEW CHAI v. YEOH THIAN SENG & ANOR.

[O.C.J. (Hashim Yeop A. Sani J.) September 28, 1974]
[Seremban — Originating Motion No. 46 of 1974]

Land Law — Charge of land and house — Lease by registered proprietor of ground floor of house — Consent of chargee not obtained — Lease not registrable — Whether lessee entitled to apply for entry of private caveat — Whether chargee has locus standi to apply for removal of caveat — Caveat over whole of land invalid — Application for extension of caveat not justified — National Land Code, ss. 253, 256, 267, 323(1)(a), 323(2), 325(1), 326(2), 330(1).

In this case the registered proprietor of land on which a two-storey shop house stood had charged it to the first respondent to secure a loan. Subsequently the registered proprietor entered into an agreement to lease the whole of the ground floor of the premises for a period of ten years to the applicant. The applicant alleged that the first respondent had been trying to coerce him to leave the premises and he lodged a private caveat against the whole of the land. The first respondent applied for the removal of the caveat and the applicant thereupon filed a motion asking that the caveat should remain on the register.

Held: (1) although the agreement with the applicant in this case was void as a lease it was valid as an agreement for a lease and therefore the applicant was entitled to apply for the entry of a private caveat under section 323(1)(a) of the National Land Code;

(2) as the caveat in this case bound the whole land and therefore necessarily bound the registered interest of the first respondent he had locus standi under section 326(1) of the National Land Code to apply for the removal of the caveat;

(3) as the applicant claimed an interest only in a specific portion of the land he was not entitled to lodge a caveat over the whole of the land and therefore the caveat lodged by him was bad and should be removed;

(4) the applicant's interest was based on equity but as between the applicant and the first respondent it was the first respondent's interest which should take precedence;

(5) there was no justifiable ground for the extension of the caveat in this case and therefore the application of the applicant should be dismissed.

Cases referred to:-

(1) *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145.

(2) *Margaret Chua* v. *Ho Swee Kiew & Ors.* [1961] M.L.J. 173.
(3) *Parker* v. *Taswell* 2 De G. & J. 559.
(4) *Josephson* v. *Mason* (1912) 12 S.R. (N.S.W.) 249 (F.C.).
(5) *Cheong Kong Enterprise Co. Sdn. Bhd.* v. *Foong Seong Mines Ltd. & Ors.* [1969] 2 M.L.J. 246.
(6) *Tee Chin Yong* v. *Ernest Jeff* [1963] M.L.J. 118.
(7) *Zeno Ltd.* v. *Prefabricated Construction Co. (Malaya)* [1967] 2 M.L.J. 107.
(8) *Chua Ngah* v. *Ng Kie En* [1968] 1 M.L.J. 268.
(9) *Vallipuram Sivaguru* v. *Palaniappa Chetty, Official Administrator as Administrator of estate of Gan Inn decd.* [1937] M.L.J. 55.
(10) *K.V.S. Maruguppa Chetty* v. *Low Jow Dun* 4. F.M.S.L.R. 87.
(11) *Butler* v. *Fairclough* (1917) 23 C.L.R. 78, 79.

ORIGINATING MOTION.

A. K. J. D'Cruz for the applicant.

K. Gunaretnam for the first respondent.

Hashim Yeop A. Sani J.: The subject matter of this motion is land C.T. No. 432, Lot 1047, Bandar Seremban, at all material times belonged to one Foo Siang Tang. On the said land stands a two-storey shophouse. On 5th December, 1972, as security for a loan of $40,000 the whole of this land was charged to Yeoh Thian Seng, the first respondent, by way of a first legal charge under Charge Presentation 3133/72, Volume 184, Fol. 63 (Exhibit "YTS 3" in first respondent's affidavit affirmed on 21st June, 1974). By virtue of section 244(1) of the National Land Code the first respondent obtained custody of the issue document of title to the said land and as the charge still remains unsatisfied the first respondent still retains the custody of the issue document of title.

On 30th October, 1973 the registered proprietor of the said land entered into an agreement with the applicant, Pok Kew Chai, to lease the whole of the ground floor of the premises for a period of ten years with an option to renew for a further period of two years (Exhibit 'A' in applicant's affidavit affirmed on 14th June, 1974). Contrary to section 226(1) of the National Land Code the consent of the chargee was not obtained and therefore, the lease agreement is not a registrable lease under the Code. Pursuant to the said agreement the applicant commenced occupation of the premises in question on or about the 15th of December, 1973 and has since been paying the agreed rental without default to the registered proprietor. The affidavit of the applicant states that thereafter the first respondent called at the said premises several times and told the applicant that he had purchased the land and shophouse in question from the registered proprietor and asked the applicant to quit and deliver vacant possession to him. This is denied by the first respondent. On 2nd January, 1974 the applicant lodged a private caveat bearing reference Registration No. Jld. 38 Fol. 8 (Exhibit "YTS 5" in the same affidavit of first respondent). According to the affidavit of the applicant the first respondent has since been trying to coerce him to vacate the premises and deprive him of the use and occupation of the said premises as well as his rights and benefits under the agreement. The first respondent then applied under section 326 of the National Land Code for the removal of the caveat in question and the notice dated 29th May, 1974 under section 326(1)(a) was served on the applicant on or about the 4th of June, 1974 (Exhibit 'D' in the same affidavit of the applicant). The applicant then filed the Notice of Motion.

In the Notice of Motion the applicant has asked for the following orders: —

(i) the caveat registered in favour of the applicant referred to earlier "do remain in the Register Document of Titles and be not removed therefrom";

(ii) the notice of removal of caveat dated 29th May, 1974 be set aside; and

(iii) such further and other relief under the National Land Code as may be appropriate.

The main issues raised and which will be the basis of this judgment are as follows:

(i) whether the applicant has a "caveatable" interest in the first place;

(ii) whether the first respondent as chargee is a qualified person to apply to the Registrar for the removal of the caveat under section 326 of the National Land Code, in other words, whether the first respondent has *locus standi;* and

(iii) if (i) and (ii) are answered in the affirmative whether the caveat lodged by the applicant is a valid caveat;

(iv) if (i), (ii) and (iii) are answered in the affirmative whether the prayers in the Notice of Motion are bad in law.

With regard to the first question it is not disputed that the applicant does not have a registrable interest under the Land Code. In *Das'* Torrens System in Malaya the learned author states at pages 297 and 298 as follows:

"A 'registered' or 'statutory' interest can only be created by registration of a memorial 'in accordance with the provisions of this Enactment' and by no other means. 'All matters required or permitted to be registered' refer not only to attested instruments in statutory form but orders of court and the like. The coercive authority of section 96 is mandatory and provides the only means of creating a statutory estate or interest. How then is the nature and extent of the right arising *ex contractu, quasi ex contractu* or by operation of law, other than statutory trusts, to be described? The preponderance of authority is in favour of describing such right as 'an equitable estate or interest', not a mere chose in action.... Unregistered interests may be recognised as interests in land, whenever in doing so they do not do violence to the principles and purposes of the Code, where the intention is to establish one estate in land only so as to ensure protection to *bona fide* purchasers for valuable consideration or decide priorities in the case of competing equities. Non-registration leaves the parties exposed to the great peril of having their grants disappointed and defeated by subsequent grants or by the bar of limitation."

However on caveats the learned author says at page 353 that an unregistered lessee of charged land who fails to obtain the assent of the chargee in writing to the registration of his lease is incapable of lodging caveats. This statement of the law would seem to be no longer correct having regard to present authorities. For it has been settled in *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjuh*[1] that a caveatable interest is not necessarily confined to a registered interest under the National Land Code. At page 147 of the judgment of the Federal Court,

Gill F.J. (as he then was) states clearly the position as follows:

"It would seem clear that the question as to what can be registered under the provisions of the National Land Code has nothing whatever to do with the question as to whether an application can rightly be made for the entry of a caveat on the strength of any particular document which is incapable of being registered but may confer a right on one party of the agreement to require the other party to execute an instrument which can be registered."

In the Torrens System in Malaya at page 324 the learned author writes on the primary test for a caveatable interest as follows:

"The primary test for a caveatable interest may be put on an alternative basis: is the right of the person lodging a caveat capable (i) of specific performance or (ii) of being protected by an interim injunction? 'The close analogy between injunctions and caveats, and the peculiar applicability of the remedy by injunction in the case of land under the Torrens system suggests that the true principle, which should govern the question whether an interest be caveatable or not, is that a caveat may be entered under circumstances which would justify an injunction being granted by the courts; at the same time it must be remembered that given the caveator's interest a caveat may be entered as a matter of right under circumstances which might not call for the immediate intervention of the courts'. Richmond, J., said to the caveator's counsel in *In re Kauri Timber Co.* 'You have not *jus in re*. The question is whether, because you might have an injunction against a sale, you may therefore lodge a caveat'."

In this case it is also not in dispute that the applicant has been in occupation of the premises which was subject of the agreement soon after the agreement was executed and has been paying rentals without default. In *Margaret Chua* v. *Ho Swee Kiew & Ors.*[2] the land was comprised in an agreement and by section 53 of Kedah Land Enactment all such land is subject to the provisions of the Enactment and cannot be leased or otherwise dealt with except in accordance with those provisions. At page 175 of the judgment of Thomson C.J. (as he then was) the following appears: —

"The second part of the defence was that the agreement of 22nd December, 1951, was and was intended to be a lease and was null and void by reason of certain provisions of the Kedah Land Enactment.... Section 92 provides that any lease for a term exceeding one year must be in the statutory form and must be presented for registration together with the issue document of title.... The section also provides that no lease of land which has been charged shall, if presented, be registered until the chargee has signified in writing his consent to such a lease."

It was held that although the agreement was void as a lease for lack of registration, it was valid as an agreement for a lease enforceable in equity. This view was based on considerable authority of *Parker* v. *Taswell*[3] and other cases cited in the judgment. That judgment also cited the New South Wales case of *Josephson* v. *Mason*[4] in which Cullen C.J. said:

"It was not disputed, and at this day it clearly could not be, that a contract for the granting of a lease would be binding upon the registered proprietor who made it, and that the Act would not stand in the way of a full recognition of such a contract, and the usual equitable incidents attached to it."

For these reasons I hold that the applicant was entitled to apply for entry of a private caveat under section 323(1)(a) of the National Land Code. But that alone is not sufficient to determine whether his application in the motion will succeed.

The second issue arises from the challenge by the applicant as to the *locus standi* of the first respondent. Primarily the ground of the applicant's challenge is that the first respondent is not a person referred to in section 326(1) of the National Land Code. That section provides that any person or body whose land or interest is bound by a private caveat may at any time apply to the Registrar for its removal pursuant to that section. In my view the challenge is misconceived. The first respondent is the chargee of the land in question by virtue of a duly registered charge, a charge which is registrable under section 292(1) of the National Land Code. The caveat lodged by the applicant binds the whole of the land ("the land itself") as can be seen from the application form for entry of the caveat (see exhibit "YTS 5" in the affidavit of the first respondent). The caveat therefore binds the whole of the land since the whole of the land is described in the schedule and not only the ground floor of the premises which is the subject of the agreement. Looking at the National Land Code it is also clear that the first respondent is directly involved with the caveat being the chargee of a duly registered charge. The first respondent is the first chargee of the land and by virtue of section 244(1) of the National Land Code he is therefore entitled to the custody of the issue document of title to the land so long as liability subsists under the charge. Section 253(1) of the Code enables a chargee to obtain the sale of the land. The powers of a chargee are further contained in section 267(1)(a) by virtue of section 253(2) of the National Land Code. Section 256(2) entitles a chargee to apply to the court for the sale of the land. A certificate of sale issued by the court under section 267(1) "shall be treated for all purposes ... as an instrument of dealing and shall be registrable ..." The first respondent in the instant case has a right to enforce the charge any time he chooses for the amount is payable on demand and the chargor failing to comply with the demand (Exhibit "YTS 3" in the affidavit of the first respondent). The first respondent has a subsisting right over the whole of the land but because of the existence of the caveat lodged by the applicant the first respondent cannot under any circumstances register a certificate of sale issued by the court and the certificate will be refused for registration because of the existence of the caveat — see section 322(2)(a) of the National Land Code for nature and effect of a private caveat.

On the caveat being lodged the Registrar is required to serve a notice on Form 19A. Section 324(3) provides that Form 19A shall be served upon the proprietor of the land bound by the caveat or in the case of a caveat binding only a particular interest upon the person or body in whom that interest is for the time being vested. At this juncture we are not concerned with the question as to who is entitled to be served Form 19A under section 324 of the Code. As shown earlier the caveat purports to bind the whole land and therefore Form 19A should be served only on the proprietor of the land and not on the first respondent who is only concerned with a particular interest in the land. But section 326(1) describes the person who is entitled to apply to the Registrar for the removal of the caveat and such persons are "any person or body whose land or interest is bound by a private

caveat". In this case the caveat binds the whole land and therefore necessarily binds the registered interest of the first respondent.

Ong Hock Thye C.J. said at page 247 of his judgment in *Cheong Kong Enterprise Co. Sdn. Bhd.* v. *Foong Seong Mines Ltd. & Ors.*[5] — "an application for extension of a private caveat concerns only the caveator and the caveatee, who is 'any person or body whose land or interest is bound by the caveat': *vide* section 326(1), Land Code." The words "any person or body whose land or interest is bound by a private caveat" would include a chargee. I have therefore no doubt that the first respondent in this case has *locus standi* under section 326(1) of the National Land Code.

Another ground put forward by the applicant (which in my view should be dismissed summarily) to attack the *locus standi* of the first respondent is that the charge is a "sham" devised to defeat the "several unsecured creditors" of the registered proprietor (applicant's affidavit affirmed on the 22nd of June, 1974). I have looked at all the affidavits and all the exhibits but cannot find any basis for such an allegation. Furthermore the allegation would seem to contradict the applicant's own affidavit affirmed on 14th of June, 1974 where he stated at paragraph 12 thereof that the first respondent had gone to the second respondent to register an instrument of transfer and to register himself as the owner of the land in question but was not acted upon by the second respondent because of the existence of the caveat.

The next question for determination is whether the caveat lodged by the applicant is a valid one. As referred to earlier, the entry of the caveat was expressed to bind the whole of the land whereas in effect the interest of the applicant was only in respect of the ground floor of the premises. The applicant also failed to particularise his interest in the application for entry of private caveat (same exhibit marked "YTS 5"). The agreement concerns only the ground floor of the premises as set out in the Statutory Declaration of the applicant required under section 323(3) of the National Land Code (Exhibit "YTS 6" in the affidavit of the first respondent).

It was held by Ismail Khan J. (as he then was) in the case of *Tee Chin Yong* v. *Ernest Jeef*,[6] that a person claiming an interest in a specific portion of a piece of land is not entitled to lodge a caveat over the whole of the land. It was further held that a caveat partially invalid would render the whole caveat null and void on the grounds that a caveat is not divisible. Such a defective caveat, in the words of Pring J., can be treated as waste-paper (*Zeno Ltd.* v. *Prefabricated Construction Co. (Malaya)*.[7]

The decision in *Tee Chin Yong's* case was cited with approval in the case of *Chua Ngah* v. *Ng Kie En*[8] though distinguished on the grounds that where there are separate lots over which a caveat has been lodged and one of the lots could not have been bound by the caveat, then in such circumstances, the caveat could be divisible.

According to *Das* in Torrens System in Malaya at page 343 the caveat must state the nature of the interest in the land and mere general words are not sufficient. "It must not be larger in its terms than the claim warrants and the caveat may fail because it does not sufficiently state the quantum of the estate or interest claimed by the caveator."

For these reasons the caveat lodged by the applicant is bad and should be removed.

Argument against the caveat of the applicant can also be based on the position of the applicant *vis-a-vis* the first respondent. The first respondent being the first chargee under the National Land Code is in custody of the issue document of title. In *Vallipuram Sivaguru* v. *Palaniapa Chetty Official Administrator as Administrator of the Estate of Gan Inn, Decd.*[9] it was held by the Court of Appeal that the first defendant-respondent had acquired, by the deposit with him of the issue document of title, the right to a lien over the land by registering at any time a caveat under section 134 of the then Land Code. That as between the first defendant-respondent and the plaintiff-appellant the former had the prior equity and that his delay in presenting his caveat for registration was not an omission which operated and enured to forfeit and take away his pre-existing equitable title. In that case G. deposited his issue document of title to land with the first defendant-respondent as security for a loan and subsequently sold the same to N explaining the absence of the issue document of title by a false statement that it was lost. The judgment of Terrell Ag. C.J. at page 57 states as follows:

> "In this connection it will be useful to refer once more to the chronological list of dates. It will be seen that the first defendant acquired the first right by virtue of the deposit of the issue document of title with him on the 19th January 1931. The learned judge on this point found as follows:—
>
> 'By the deposit with him of the issue document of title the first defendant acquired a right to present a caveat and so create a lien.'
>
> There can, I think, be no doubt that this is so."

In the judgment of Whitley J. at page 58 the following is stated:

> "The case turns admittedly upon a question of priority of equities. By the deposit with him of the issue document of title the first defendant undoubtedly acquired certain valuable rights, *inter alia* the right to retain the deeds and the right to acquire a lien over the land under the Land Code by registering a caveat under section 134. He can exercise this latter right at any time. As between himself and the plaintiff he admittedly has the prior equity and in the absence of other factors that priority in point of time must prevail."

Section 330(1) of the National Land Code provides that any person or body with whom the issue document of title to any land, or any duplicate lease, has been deposited as security for a loan may, as provided in section 281, apply to the Registrar under that section for entry of a lien-holder's caveat in respect of the land.

The applicant's interest is based on equity but as between the applicant and the first respondent it is the first respondent's interest which must take precedence. In *K.V.S. Murugappa Chetty* v. *Low Jow Dun*[10] where, as in this case, the chargee's consent was not obtained prior to executing a lease it was held that the chargee's consent to a lease is necessary and that as that consent has not been obtained the rights of the

chargee took priority of the rights of the lessee and that the caveat should be removed. Section 36 of the Registration of Titles Enactment in force then also required the consent in writing of the chargee in respect of any lease for a term exceeding three years.

Furthermore in this case the applicant entered into the agreement with the proprietor well after the land was charged to the first respondent. It was negligent on his part not to have made reasonable inquiry before entering into the agreement. His equitable interest should not therefore be allowed to supersede that of the first respondent

The final question for determination was the question raised by the first respondent that the prayers contained in the Notice of Motion are bad in law. Section 326(2) of the National Land Code provides that the court may on the application by any person or body on whom such a notice has been served "from time to time extend the said period for one month." It is clear that a private caveat once lodged on the Register can only be extended for a definite period of time under that section. That section does not appear to allow an indefinite period of extension and to rely solely on the operation of section 328 of the National Land Code. Gill F.J., (as he then was) in *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjuh, supra*, at page 148 adopted the principle laid down in *Butler* v. *Fairclough*[1] where Griffith C.J. observed:

"It must be taken to be well settled that under the Australian system of registration of title to land the court will recognise equitable estates and rights except so far as they are precluded from doing so by the statutes. This recognition is, indeed, the foundation of this scheme of caveat which *enables such right to be temporarily protected in anticipation of legal proceedings*" (the italics is mine).

On the purpose of caveat *Das* in Torrens System in Malaya at page 325 writes:

"It enables the caveator to retain the matter in *statu quo* until his claim is adjudicated upon by the court and serves as a notice to the world at large of an outstanding equitable claim. The lodging of a caveat is really in the nature of the initiation of litigation, and only those persons should be entitled to initiate litigation who are entitled to litigate the matter of the dispute which is set up by the caveat. *Municipal District of Concord* v. *Coles*."

Nothing is mentioned in the affidavits of the applicant that any proceeding is pending in respect of the agreement between him and the proprietor of the land. There is no mention in the affidavits of the applicant nor in the notice of motion that the applicant intends filing a suit for specific performance. Therefore the application as can be understood from the notice of motion is contrary to the provisions of the National Land Code and devoid of any justifiable ground for extension of the caveat.

Based on all the foregoing the application is dismissed with costs and I further order that the caveat bearing Registration No. Jld. 38 Fol. 8 entered on land held under C.T. No. 432 for Lot No. 1047 Bandar Seremban be removed from the Register.

Application dismissed.

Solicitors: *A. K. J. D'Cruz & Co.; Gunaretnam & Co.*

RE KONG MUN CHEONG & ANOR.; OFFICIAL ASSIGNEE, MALAYSIA v. MALAYA INDUSTRIAL AND MINING CORP. BHD.

[O.C.J. (Abdul Hamid J.) October 1, 1974]
[Kuala Lumpur — In Bankruptcy (Selangor) No. 131/1971]

Bankruptcy — Offer of composition with creditors — Not followed by registration of deed of arrangement — Act of bankruptcy — Attachment of debt due after notice of act of bankruptcy — Void against Official Assignee — Bankruptcy Act, 1967, ss. 3(1)(h); 47(1) and 50.

In this case the bankrupts had called a meeting of all their creditors on 29 December 1970 and made an offer of composition to them, but this had not been followed by the registration of a deed of arrangement. Subsequently a creditor's petition was presented and a receiving order was made and the persons concerned made bankrupt on 30 August 1971. The respondents had attached a debt due to the bankrupts before the date of the receiving order but they had earlier attended the meeting of creditors called by the bankrupts.

Held: (1) as the offer of composition made by the debtors to their creditors was contained in a deed of arrangement which had not been registered within fourteen days after it was made, the debtors had by reason of section 3(1)(h) of the Bankruptcy Act, committed an act of bankruptcy;

(2) the attaching creditors in this case had failed to satisfy the court that they had completed the attachment before notice of the commission of an act of bankruptcy and therefore they were not entitled to retain the benefits of the attachment against the Official Assignee.

Case referred to:-

(1) *Re Chinery* (1884) 12 Q.B.D. 343 at p. 346.

BANKRUPTCY.

Vincent Dass (Senior Assistant Official Assignee, Selangor) for the applicant.

V. T. Nathan for the respondents.

Abdul Hamid J.: The Official Assignee is asking for a declaration that the sum of $67,319.95 received by Messrs. Shearn, Delamore & Company for and on behalf of the respondents pursuant to bankruptcy proceedings vide Kuala Lumpur High Court Civil Suit No. 926/70 was void against the applicant as trustee in the property of Kong Mun Cheong and Lim Kian Huat trading as Eng Huat Construction Company (hereinafter called "the bankrupts") under the provisions of the Bankruptcy Act, 1967 as the money was received after the respondents had notice of the commission by the debtors of an act of bankruptcy.

A creditor's petition was presented on March 19, 1971 against the bankrupts on the ground that the bankrupts within 6 months before the date of presentation of the petition committed an act of bankruptcy, namely, they did, at a meeting of all creditors called by them at Nos. 403 and 404, 4th floor, Loke Yew Building, No. 4, Jalan Bandar, Kuala Lumpur, on December 29, 1970, make to all their creditors, not being partners, an offer of composition with their creditors and such offer was not followed by the registration within 14 days thereafter of a deed of arrangement with their creditors in accordance with the rules for the time being in force for the registration of deeds of arrangement under the Act.

A receiving order was made at the High Court, Kuala Lumpur, on August 30, 1971 against Eng Huat Construction Company. Both partners Kong Mun Cheong and Lim Kian Huat were on the same day adjudged bankrupts.